Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

CRIMINAL APPEAL NO. 235 OF 2006

APPELLANT IN JAIL	:	Sunder Sai, S/o Mangaru Uraon aged about 45 years, R/o Village Jhagarpur, P.S. Lailunga, Tahsil Gharghoda, District Raigarh, (C.G.)
		VERSUS
RESPONDENT	:	State of Chhattisgarh: through District Magistrate Raigarh, Distt. – Raigarh (CG).

MEMORANDUM OF CRIMINAL APPEAL U/S. 374 OF Cr.P.C. 1974

(33)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.235/2006

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Sunder Sai

Versus

State of Chhattisgarh

Smt. Indira Tripathi, Counsel for the appellant.

Shri Neeraj Mehta, Panel Lawyer for the State.

JUDGMENT

(Delivered on this 06th day of May 2006)

This appeal is directed against the judgment dated 14.3.2006 delivered by Shri A.K. Shrivastava, Sessions Judge, Raigarh in Sessions Case No.118/2005 whereby the appellant was convicted under Section 304 part-II of the I.P.C. and was sentenced to rigorous imprisonment for five years and fine of Rs.1000/- and in default to undergo additional R.I. for one month.

2. The factual matrix in brief is that deceased Jagnibai was the wife of the appellant. Jagnibai had returned from village Kamarga with Behrobai P.W.7 on 14.9.2005. There was a quarrel between the appellant and Jagnibai. The appellant pushed her on the ground. Behrobai P.W.7 who came there to fetch her *saree* saw the incident and advised the appellant to live peacefully and not to quarrel with Jagnibai. It is alleged that in the

intervening night of 14th & 15th September 2005 the appellant beat Jagnibai by kicks and throttled her to death.

3. On 15.9.2005 at 8.30 P.M. Jagatram P.W.5 went with his brother Ghurau to Police Station Lailunga and lodged merg intimation Ex.P.7 that his sister Jagnibai had expired, pointing the needle of suspicion towards the appellant, who was his son-in-law. Inquest on the dead body of Jagnibai was conducted on 16.9.2005 vide Ex.P.6 and the dead body was sent for post-mortem examination. Dr. Sunil Nigam P.W.10 conducted the post-mortem examination and found bruise 6 x 5 cm over right side of neck. On dissection, he found effusion of blood which resisted washing over the sterno-mastoid muscle and over the tissues with blood clot over the right side of the neck. Another bruise 5 x 4 cm over the left side of neck was seen. On dissection, effusion of blood over the muscles and tissues which resisted washing was found. Bruise 20 x 15 cm situated over the upper and lower abdomen was found. On dissection, the abdominal cavity was full of blood and the blood clots were seen over mesentery of large intestine at multiple places. On dissection of scalp, blood clots were seen over both parietal portion of scalp along with effusion of blood over the tissue which resisted washing. It was opined that death of Jagnibai was homicidal

4. During investigation, case diary statement of Ku. Malti P.W.1 and Ku. Karmi P.W.2, both daughters of the appellant, was recorded in which the factum of extra-judicial confession by the appellant for beating Jagnibai was stated. Statement under Section 161 Cr.P.C. of Maheshram P.W.3, son of the appellant,

also revealed that the appellant had made an extra-judicial confession of having caused the death of Jagnibai by throttling and by assaulting her on the chest by kicks. After completion of investigation, the appellant was prosecuted under Section 302 I.P.C. for committing murder of Jagnibai.

5. The prosecution examined as many as 10 witnesses. Charge under Section 302 was framed against the appellant who abjured the guilt, pleaded innocence and led no evidence in defence. Relying upon the statements of Smt. Behrobai P.W.7, Jagatram P.W.5, the post-mortem report of Dr. Sunil Nigam P.W.10 and the admission made by the appellant in his examination under Section 313 Cr.P.C. that in the intervening night of 14 - 15 September 2005, he was present with Jagnibai at his house, the learned trial Judge held with absolute judicial certainty in para 23 that the appellant had caused the death of Jagnibai by throttling. It is surprising to note that after having recorded such a finding, the learned Sessions Judge instead of convicting the appellant under Section 302 I.P.C. held that the appellant did not intend to cause the death of Jagnibai, and therefore, convicted the appellant under Section 304 part-II of the I.P.C. and sentenced him only to rigorous imprisonment for five years and fine as aforesaid in paragraph-1.

6. Smt. Indira Tripathi, learned counsel for the appellant has assailed the conviction of the appellant on the ground that Ku. Malti P.W.1 and Ku. Karmi P.W.2, both daughters of the deceased and Maheshram P.W.3, son of the deceased did not support the prosecution story and stated that Jagnibai had consumed excessive quantity of alcohol in the night and was vomiting and

not feeling well. The appellant had offered to take Jagnibai to the hospital but she refused. Ku. Karmi P.W.2 had stated that death of Jagnibai was caused due to consumption of excessive alcohol. It was further argued that Smt. Peelmati P.W.4 also did not support the prosecution story. The spot map prepared by Patwari Jawahar Singh P.W.6 clearly showed that dead body of Jagnibai was lying in the *purchee* of the house of the appellant. This fact was also borne out from the inquest memo Ex.P.6. Therefore, merely on the basis of the admission by the appellant that he and Jagnibai were together in the house on the intervening night of 14th - 15th of September 2005 no inference could be drawn against the appellant that he alone was responsible for the death of Jagnibai. Lastly, it was contended that the prosecution did not establish that the appellant had any motive for committing murder of Jagnibai. On these premises, learned counsel for the appellant submitted that the conviction and sentence awarded by the learned trial Judge is liable to be set aside. Reliance was placed on *Rajkumar vs. State of M.P.* **2004(4) Crimes 14 (SC).**

7. On the other hand, Shri Neeraj Mehta, learned Panel Lawyer for the State vehemently argued that the evidence led by the prosecution clearly established the guilt of the appellant for causing death of Jagnibai since the following circumstances were fully established:

A) The appellant admitted in question No.17 of his examination under Section 313 Cr.P.C. that he was present in the house with Jagnibai in the intervening night of 14th - 15th September 2005.

B) The unrebutted testimony of Smt. Behrobai P.W.7 established beyond doubt that a quarrel had ensued between the appellant and Jagnibai in which the appellant had pushed Jagnibai on the ground and at that time no one else was present in the house of the appellant.

C) The autopsy report Ex.P.16 and the testimony of Dr. Sunil Nigam P.W.10 established beyond doubt that death of Jagnibai was homicidal and was caused as a result of Asphyxia due to throttling.

On these premises, Shri Neeraj Mehta, learned Panel Lawyer also contended that the learned Sessions Judge ought to have convicted the appellant under Section 302 I.P.C. and not under Section 304 part-II of the I.P.C.

8. Having heard the rival submissions, I have perused the record of Sessions Case No.118/2005. It is true that Ku. Malti P.W.1, aged 15 years, Ku. Karmi P.W.2, aged 14 years and Maheshram P.W.3 did not support the prosecution story and stated that Jagnibai used to consume excessive quantity of alcohol. Ku. Karmi P.W.2 has stated that death of Jagnibai was caused due to excessive consumption of alcohol. However, it can be seen that these witnesses are the children of the appellant and are not speaking the truth to protect the appellant. The testimony of Dr. Sunil Nigam P.W.10 and the autopsy report Ex.P.16 do not show that on dissection alcohol was found in the stomach of the deceased. It is also pertinent to note that Smt. Behrobai P.W.7, who had returned to village Jhagarpur with Jagnibai, has categorically denied that Jagnibai had consumed

alcohol on the date of occurrence. Thus, the testimony of Ku.Malti P.W.1 and Ku. Karmi P.W.2 and also Maheshram P.W. 3 is nothing but a bundle of lies and not worth placing credence.

9. Smt. Behrobai P.W.7 has stated that she had returned with Jagnibai to Village Jhagarpur and on visiting the house of Jagnibai for taking her *saree* had found that the appellant had pushed Jagnibai on the ground. On seeing the quarrel, she advised the appellant to live peacefully and not to quarrel and thereafter returned home. She has categorically stated that when she went to the house of the appellant, the appellant and Jagnibai were present inside the house and there was no other person in the house. This circumstance was put to the appellant in question No.17 in the examination under Section 313 Cr.P.C. The appellant admitted that he was present in his house with Jagnibai in the intervening night of 14th & 15th of September 2005. The testimony of Smt. Behrobai was wholly unrebutted in cross-examination. Nothing has emerged in her testimony to show that she bears any grudge against the appellant or had any motive to falsely implicate him. Her husband Anandram P.W.8 has also corroborated her testimony by stating that after returning from the house of the appellant she had told him that the appellant was beating his wife. It is thus established beyond the shadow of any doubt that a quarrel had ensued between the appellant and Jagnibai on the evening of 14th September 2005 in which the appellant had beaten Jagnibai and had pushed her on the ground. It is also established that the appellant and Jagnibai were together in the intervening night of 14th & 15th September 2005 at the house of the appellant.

10. Dr. Sunil Nigam P.W.10 has proved the report of autopsy Ex.P.16 conducted on the dead body of Jagnibai. It has been dealt in paragraph 3 (supra). It leaves no room for any doubt that death of Jagnibai was homicidal. She was beaten in the chest as also on the skull and was throttled to death. There is a positive assertion by Sunil Nigam that death of Jagnibai was as a result of Asphyxia due to throttling. In cross-examination, it has also emerged that the injuries sustained by Jagnibai were ante-mortem injuries.

11. The case of *Rajkumar vs. State of M.P.* **2004(4) Crimes 14 (SC)** relied upon by the appellant is distinguishable as in that case there was no evidence to show that the appellant was last seen with the deceased wife soon before the occurrence. The testimony of the brother of the deceased was misread to suggest that the deceased had in her dying declaration referred to the appellant as killer. On these premises, it was held that the circumstantial evidence did not exclude the hypothesis of innocence of the accused. In the present case, the facts are clearly distinguishable.

12. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the prosecution has established that the appellant and Jagnibai were together at the house of the appellant on the intervening night of 14th & 15th September 2005. It is also established that a quarrel had ensued in the evening of 14th September 2005 in which the appellant had assaulted Jagnibai. The medical evidence clearly proves that death of Jagnibai was homicidal and was caused as a result of Asphyxia due to throttling. The above

circumstances are wholly consistent with the guilt of the appellant and exclude the hypothesis of his innocence completely. They lead to the irresistible conclusion that the appellant had intentionally caused the death of Jagnibai by throttling her, after assaulting her on the chest, stomach and the head. It is shocking to see that the learned Sessions Judge, Raigarh after recording a clear finding that the appellant had caused the death of Jagnibai by throttling, convicted the appellant under Section 304 part-II of the I.P.C. on the wholly inconceivable ground that the appellant did not intend to cause the death of Jagnibai. The very fact that the appellant throttled Jagnibai to death clearly proves the intention of the appellant to cause her death, beyond any doubt. However, since the State has regrettably not preferred any appeal for enhancement of sentence, I would refrain from saying any further on the above aspect. Suffice it to say that the conviction of the appellant under Section 304 part-II of the I.P.C. and the sentence awarded thereunder by the learned trial Judge, Raigarh, do not call for any interference in this appeal preferred by the appellant.

13. In the result this appeal being devoid of merit is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge